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the contractor should furnish all materials and the company should pay for the work and materials furnished after inspection, in 10 payments, as the work progressed, that its inspectors should inspect the work and materials with power to reject, that the contractor should procure releases from all liens for materials, etc., and should protect it against injuries, etc., during construction, and indemnify it from all penalties for violating ordinances, statutes, etc., and should insure in favor of the company against damage by fire to an amount equal to the payments advanced to it, and that the company could reject the vessel upon final inspection; but there was no provision reserving a lien for partial payments made by the company, or attempt to pass title to the extent of the payments made. Held, that title to the vessel remained in the contractor and did not pass, even though the contract referred to the company as "owners" and was subject to liens for supplies furnished in its construction, under Code 1887, § 2485, as amended by Acts 1891-92, p. 362, c. 224 (Code 1904, p. 1246), giving all persons furnishing supplies to a manufacturing company for its operation a prior lien on its personality, other than its plant, so that the purchase money of the boat, which was sold before completion, was first subject to such liens.

[Ed. Note.—For other cases, see Maritime Liens, Dec. Dig. § 38.\* 9 Va.-W. Va. Enc. Dig. 332, et seq.; 12 id. 15.]

**18. Contracts (§ 170\*)—Construction—Construction of Parties.**—Since a contract for the construction of a boat was necessarily made with reference to the statutory right of builder's creditors to liens, the construction of the contract by the parties as to priority and validity of liens, etc., was immaterial.

[Ed. Note.—For other cases, see Contracts, Cent. Dig. § 753; Dec. Dig. § 170.\* 3 Va.-W. Va. Enc. Dig. 401, et seq.]

**19. Maritime Liens (§ 37\*)—Time Lien Attaches.**—A lien for supplies furnished for the construction of a vessel attaches from the time the supplies were furnished.

[Ed. Note.—For other cases, see Maritime Liens, Dec. Dig. § 37.\*] Judgment reversed and remanded. Buchanan and Harrison, JJ., dissenting in part.

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ROSELLE *v.* COMMONWEALTH.

Sept. 16, 1909.

[65 S. E. 526.]

**1. Criminal Law (§ 447\*)—Evidence—Parol Evidence.**—The rule against contradicting a written instrument by parol does not apply to controversies between the parties to the writing and third persons, so that, in a prosecution of accused for peddling picture frames with-

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\*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.

out license, that his contract with one who bought a picture stated that the purchaser agreed to also purchase a frame did not prevent the latter from testifying that the entire contract for the frame was made when the picture was delivered.

[Ed. Note.—For other cases, see Criminal Law, Cent. Dig. § 1029; Dec. Dig. § 447.\* 10 Va.-W. Va. Enc. Dig. 682.]

**2. Commerce (§ 40\*)—Subject of Regulation—Sale of Goods.**—The test whether a transaction constitutes interstate commerce is whether the subject-matter of the sale is within the jurisdiction of the state when the sale is made, so that where the purchaser of a picture was not bound to take a frame under his contract, but the sale of the frame was wholly completed within the state when the picture was delivered, its sale was not interstate commerce.

[Ed. Note.—For other cases, see Commerce, Cent. Dig. § 29; Dec. Dig. § 40.\* 7 Va.-W. Va. Enc. Dig. 866.]

Judgment affirmed. All the judges concur.

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KIRK *v.* OAKLEY et al.

Sept. 9, 1909.

[65 S. E. 528.]

**1. Judicial Sales (§ 52\*)—Rights of Purchasers—Defects in Title.**—While the doctrine of caveat emptor applies to judicial sales, a purchaser in good faith will be protected where objection is made to defects in title before confirmation, so that a purchaser who objected before confirmation of a judicial sale was entitled to have the rights of outstanding lienholders ascertained.

[Ed. Note.—For other cases, see Judicial Sales, Cent. Dig. §§ 100-103; Dec. Dig. § 52.\* 8 Va.-W. Va. Enc. Dig. 688, 734, 824-5, 829.]

**2. Judgment (§ 665\*)—Conclusiveness.**—In a proceeding by a purchaser at a judicial sale, before confirmation, to have alleged holders of outstanding liens brought in and their rights determined, a decree determining such rights was not binding, where the alleged lienors were not made parties.

[Ed. Note.—For other cases, see Judgment, Cent. Dig. § 1177; Dec. Dig. § 665.\* 8 Va.-W. Va. Enc. Dig. 678, 688; 278.]

Judgment reversed and remanded. Keith, P., absent.

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KNIGHT et al. *v.* GRIM et al.

Nov. 18, 1909.

[66 S. E. 42.]

**1. Appeal and Error (§ 1039\*)—Harmless Error—Prejudice—Defenses in Ejectment.**—Error in refusing to require defendants in

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\*For other cases see same topic and section NUMBER in Dec. & Am. Digs. 1907 to date, & Reporter Indexes.